

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal No. 17538 of Advisory Neighborhood Commission 3C and Woodley Park Community Association, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permits No. 86798 and 67758, on May 26, 2006, allowing the construction of a new building/underground parking garage. Appellant alleges that the authorized construction is in violation of several sections of 11 DCMR, including subsections 330.5, 2301, and 2500. The subject property is located in the R-5-B and R-5-D districts at premises 2660 Woodley Road N.W. (Square 2132, Lot 832).

HEARING DATE: December 12, 2006

DECISION DATE: February 6, 2007

DECISION AND ORDER

This appeal was submitted July 14, 2006 by Advisory Neighborhood Commission ("ANC") 3C and the Woodley Park Community Association, which appealed from the administrative decision of the Zoning Administrator, made May 12, 2006, to issue permits allowing the construction of a new underground parking garage and related sheeting and shoring at the Wardman Park Marriott Hotel at 2660 Woodley Road N.W. (Square 2132, Lot 832). According to the Appellants, the Zoning Administrator erred in deciding that construction of a parking garage on property used as a hotel in a Residence zone was consistent with the Zoning Regulations.

Following a public hearing, the Board voted at its public meeting on February 6, 2007 to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated July 17, 2006, the Office of Zoning provided notice of the appeal to the Office of Planning, the Department of Consumer and Regulatory Affairs ("DCRA"), ANC 3C, and Single Member District/ANC 3C02. Pursuant to 11 DCMR § 3112.14, on October 2, 2006 the Office of Zoning mailed letters or memoranda providing notice of the hearing to ANC 3C and the Woodley Park Community Association; to the general manager of the Wardman Park

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Marriott Hotel and to Wardman Park Residential LLC, on behalf of the owners of the subject property; and to the Zoning Administrator. Notice was also published in the D.C. Register on October 6, 2006 (53 DCR 7975).

Party Status. The parties in this proceeding were the Appellants and the JBG Companies d/b/a Wardman Hotel LLC/JBG Associates LLC ("JBG"), the record owner of the property that was the subject of the appeal. There were no additional requests for party status.

Appellant's Case. The appeal challenged the issuance of two permits for a new garage under construction on property used as a hotel in a Residence zone. The Appellants argued that the Zoning Administrator erred in deciding that construction of the garage was consistent with the Zoning Regulations on grounds that (i) the construction would violate "special grandfathering zoning rules that apply to hotels in residential zones" as well as the prohibition in the Zoning Regulations against construction of a parking garage in the front yard of a property, and (ii) the Zoning Administrator lacked assurance that all plans submitted for the subject property cumulatively complied with zoning requirements. The Appellants alleged that the hotel was subject to special restrictions imposed by § 350.4(d) that prohibit construction of new hotel buildings or an increase in the area of commercial aspects of hotels in residential districts, and that the garage would violate the Zoning Regulations as an accessory building not located in the rear yard or within the main building on the subject property, as required by §§ 2301 and 2500.

According to the Appellants, the garage was an accessory building, separate from the hotel building, and thus was not permitted in the front yard of the property. The Appellants also argued that construction of the garage – as a separate building not in existence as a hotel in 1980 – was not permitted under the Zoning Regulations. The Appellants asserted that § 350.4(d) authorized "only certain types of construction projects on a grandfathered hotel" – that is, a hotel could be repaired, renovated, remodeled, or structurally altered – and that any other project was prohibited. According to the Appellants, the garage project was prohibited because it did not constitute a repair, renovation, remodeling, or structural alteration.

Zoning Administrator. The Department of Consumer and Regulatory Affairs argued that the appeal should be dismissed as untimely because the appeal was filed more than 60 days after the issuance of the building permit that was the subject of the appeal, the Appellants did not demonstrate any exceptional circumstances out of their control that impaired their ability to file the appeal, and an extension would prejudice the parties.

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In response, the Appellants argued that the appeal was timely filed within 60 days of the time the Appellants had knowledge of the issuance of the permit, at an ANC meeting held three days after the permit was issued. The Appellants stated that notice of issued permits by means of the *D.C. Register* or by email from DCRA was often delayed or difficult to read.

The Department of Consumer and Regulatory Affairs also argued that the appeal should be denied on the ground that construction of the garage was not prohibited by § 305.4, because the garage will be a below-grade alteration of the existing building, not a stand-alone building or an addition. According to the Zoning Administrator, the subject property contains a single building used as a hotel, with a parking garage under construction in the front lawn area, which will be returned to its former status after construction was completed. The Zoning Administrator testified that the new parking garage would not be a stand-alone building because it will be constructed below grade with only *de minimus* life-safety features above grade; two exit/egress stairways will be above grade, while four air intakes will be less than four feet above grade. The Zoning Administrator stated that the parking garage would not be an accessory building but was an alteration of the existing building, noting that the garage will be underground, will have a connection to the existing building, and will not affect lot occupancy on the site.

According to the Zoning Administrator, provisions in the Zoning Regulations pertaining to the placement of parking garages in rear yards apply only to separate buildings. The Zoning Administrator testified that the lack of an above-grade connection between the garage and the hotel did not invalidate the conclusion that the garage and hotel would be part of one building, because the above-grade connection requirement was applicable only to two above-grade structures.

Intervenor. The Intervenor provided testimony from a representative of the JBG Companies, the owner of the property; an expert in architecture; and an expert in zoning regulations. The Intervenor argued that the Appellants' assertions were inconsistent with prior interpretations of the Zoning Regulations by the Board and by the Zoning Administrator. The Intervenor contended that (i) the garage was not an accessory building, because an accessory building, unlike the garage, is not connected to another building; (ii) the new garage will not constitute a separate building in the front yard of the hotel, because the garage will be located below grade and will not count toward gross square footage of the site; (ii) the garage will provide a storage area for required parking for the hotel, and thus will constitute an area devoted to service use and not a function room, exhibit space, or commercial adjunct.

BZA APPEAL NO. 17538**PAGE NO. 4****FINDINGS OF FACT**

1. The subject property is located at 2660 Woodley Road, N.W. (Square 2132, Lot 832) in the Woodley Park section of Northwest Washington. The irregularly shaped parcel has a land area of approximately 16 acres and has street frontage along Woodley Road, Connecticut Avenue, 24th Street, and Calvert Street.
2. The property is currently improved with a single building used as a hotel, known as the Marriott Wardman Park Hotel. Portions of the building known as the Center Tower and Park Tower are located in the southern section of the site, while the portion known as the Wardman Tower is located in the eastern section.
3. As part of a redevelopment project, the owner of the property undertook the construction of a new parking garage along the Woodley Road frontage in a previously undeveloped area north of the Center Tower portion of the hotel. As planned, the garage will replace an existing surface lot elsewhere on the subject property to satisfy the parking requirement for the hotel under Chapter 21 of the Zoning Regulations; the surface lot will be redeveloped separately. The parking garage will be located below grade except for life-safety features, including two exit/egress stairways and four air intakes. The parking garage will be connected to the hotel by an underground corridor at the P-2 level.
4. Construction of the garage will not result in an increase in the gross floor area of the hotel, or in the total area within the hotel devoted to function rooms, exhibit space, or commercial adjuncts. The parking garage will serve as a storage area for required parking to serve the existing hotel. The below-grade portions of the garage will not affect the lot occupancy of the site.
5. Most of the subject property is located in the R-5-B zone district. The southern portion is zoned R-5-D.
6. The hotel was in existence as of May 16, 1980.
7. A hotel in existence as of that date is permitted as a matter of right in the R-5-B and R-5-D zones. However, the gross floor area of the hotel may not be increased, and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered. 11 DCMR 350.4(d).

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8. A "building" is defined in the Zoning Regulations as "a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel." When separated from the ground up or from the lowest floor up, each portion is generally deemed a separate building. The existence of communication between separate portions of a structure below the main floor is not construed as making the structure one building. 11 DCMR § 199. Conversely, the existence of such communication at or above the main floor permits unifies the separate portions of a structure into a single building.
9. An "accessory building" is defined as "a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building." 11 DCMR § 199.
10. The definition of "hotel" requires that all areas within a hotel must be included in one of five categories: (a) commercial adjuncts – retail and service establishments customarily incidental and subordinate to hotel use; (b) exhibit space – floor area primarily designed for the display and storage of exhibits for conferences, trade fairs, and similar group events; (c) function room – rooms used primarily to accommodate gatherings of hotel guests and visitors; (d) guestroom areas – floor area devoted to guestrooms or suites; or (e) service areas – floor area devoted to mechanical services and storage supportive of the hotel as a total entity. 11 DCMR § 199.
11. On November 17, 2005, the property owner applied for a permit to construct three underground levels of parking, containing approximately 250 parking spaces. Building Permit No. 86798 authorizing the garage construction was issued Friday, May 12, 2006. In January 2006 the property owner applied for a permit to do sheeting and shoring in connection with the construction of the parking garage. Permit No. 67758, authorizing sheeting and shoring, was issued May 26, 2006.
12. On May 15, 2006, the Monday following the issuance of Permit No. 86798, the Zoning Administrator issued a memorandum to the chair and single member district commissioner for ANC 3C on the development project at the Wardman Park JBG Hotel. In that memorandum he stated that after considering the ANC's concerns, he had determined that construction of the underground parking structure was allowed as a matter of right for the reasons set forth in the memorandum. The Zoning Administrator also appeared at the ANC public meeting that evening and notified the ANC and the community that the permit had been issued.

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13. At a public meeting on June 19, 2006, with a quorum present, ANC 3C voted 6-0 to approve a resolution disagreeing with the legal conclusions of the Zoning Administrator that the property owner could proceed as a matter of right. The ANC resolved to appeal the issuance of permits for construction on the subject property.
14. ANC 3C and Woodley Park Community Association filed its appeal July 14, 2006, 63 days after the issuance of Building Permit 86798, authorizing construction of the underground garage, and 60 days after the ANC and Woodley Park Community Association had notice of the issuance of the permit.

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration the Zoning Regulations. 11 DCMR §§ 3100.2, 3200.2. In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. 11 DCMR § 3100.4.

Motion to Dismiss

At the hearing, DCRA orally moved to dismiss the appeal on grounds that the appeal was untimely filed as it was filed 63 days after the building permit authorizing the construction of the underground garage was issued.

The District of Columbia Court of Appeals has held that “[t]he timely filing of an appeal with the Board is mandatory and jurisdictional.” *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C., 1994.) If an appeal is not timely filed, the Board lacks jurisdiction to consider it. *Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117, 1122 (D.C., 2001). Accordingly, the Board must consider the jurisdictional question of timeliness prior to a consideration of the merits.

The Board’s Rules of Practice and Procedure governing the timely filing of an appeal before the Board are set forth in 11 DCMR § 3112.2. Subsection 3112.2 (a) requires that all appeals be filed within 60 days after the date the person filing the appeal had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. This 60-day time limit may be extended only if the appellant shows that: (1) “There are exceptional circumstances that are outside the appellant’s control and could not be reasonably anticipated that substantially impaired the

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appellant's ability to file an appeal to the Board; and (2)The extension of time will not prejudice the parties to the appeal." 11 DCMR 3112.2(d).

In this case, the facts are clear and undisputed as to when the building permit was issued and when the appellants had notice of the issuance of the permit. The permit was issued on Friday, May 12, 2006. Appellants learned of the issuance of the permit the following business day, Monday, May 15, 2006, when the Zoning Administrator issued a memorandum to the ANC alerting them to the fact and then addressed the ANC and the community on this issue at an ANC meeting that evening. The appeal was filed within 60 days of May 15, 2006, the date the ANC learned that the permit had been issued. There is no evidence in the record to conclude that the appellants should have reasonably known of the issuance of the permit prior to that date. Therefore the Board concludes that the filing of the appeal was timely, consistent with the requirements of 11 DCMR § 3112.2(a).

The Merits

I. The underground parking garage is not an accessory building but an extension of the existing building.

Appellants allege that the new garage will be an accessory building that will be improperly located in the front yard of the property. The Board credits the testimony of the Zoning Administrator that the new garage will not constitute a new building, separate from the existing building, because the garage will be constructed below grade and will be connected to the hotel with a hallway. The garage will lack a roof and therefore does not meet the definition of "building" in the Zoning Regulations. Because the garage will not be a building, it cannot be an accessory building. Rather, the new parking garage will constitute an underground addition to the existing hotel building.

Appellants argue that the parking structure and the existing hotel do not constitute one building because the communication between the garage and the hotel, i.e. the hallway, is underground. Their allegation is premised on the reference in the definition of "building" to communication between separate portions of a structure below the main floor, as not being construed as making the structures one building. The Board concurs with the Zoning Administrator that the above-grade connection requirement applies only to two or more above-grade buildings. The definition of building states in relevant part: "**When separated from the ground up or from the lowest floor up**, each portion shall be deemed a separate building, except as provided elsewhere in this title (Emphasis added.). The lack of an above-grade connection between the garage and the hotel does not make the garage a separate building as defined in the Zoning Regulations. Moreover, because

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the parking garage is below-grade, it is not located in a yard. Therefore, the underground parking garage with a hallway connection to the hotel – will constitute an addition to the existing building, and not a separate accessory building located in the front yard of the property.

II. The underground parking garage is not an expansion of a hotel in a Residence zone in contravention of § 350.4.

Appellants allege that the underground parking garage would violate 11 DCMR § 350.4 on grounds that the provision prohibits the construction of new hotel buildings; that the construction cannot be characterized as a repair, renovation, or alteration of an existing hotel; and the construction increases the total area within the hotel devoted to function rooms, exhibit space and commercial adjuncts.

Title 11 DCMR § 350.4 provides, in relevant part, that the following uses are permitted as a matter of right in an R-5 District:

(d) Hotel...in existence as of May 16, 1980...provided that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled or structurally altered.

For the reasons set forth above, the underground garage is not a new building. The Board concurs with the Intervenor's assertion that the new garage will not cause an increase in the area at the hotel devoted to function rooms, exhibit space, or commercial adjuncts, but will serve as a storage area for required parking. Moreover, because it is underground, it will not increase the gross floor area of the hotel. Accordingly, the underground parking garage may be considered a structural alteration in accordance with § 350.4.

III. The Zoning Administrator's statement in a memorandum to the Appellants did not constitute an error in the administration of the Zoning Regulations.

Appellants allege that it was error in violation of § 350.4 and the Zoning Regulations in general, for the Zoning Administrator to indicate in his May 15, 2006, memorandum to the ANC, explaining his determination that the underground parking garage could proceed as a matter of right, a caveat that "the calculations provided by JBG were preliminary and that the Office of Zoning Administrator will have to ensure that all submitted plans cumulatively comply with the zoning requirements."

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Appellants do not indicate how this statement violates either § 350.4 or the Zoning Regulations, in general, and the Board finds no merit to this claim.

For the reasons stated above, the Board concludes that the Appellant has not satisfied the burden of proof with respect to its claim of error in the administrative decision of the Zoning Administrator to issue Building Permits No. 86798 and 67758, on May 26, 2006, allowing the construction of a new underground parking garage for a hotel in the R-5-B and R-5-D districts at 2660 Woodley Road N.W. (Square 2132, Lot 832).

Accordingly, it is hereby **ORDERED** that

a. The motion to dismiss the appeal as untimely is **DENIED**.

VOTE: 3-2-0 (Geoffrey H. Griffis, Ruthanne G. Miller, and John A. Mann II to deny the motion to dismiss; Curtis L. Etherly, Jr. and John G. Parsons to grant the motion).

Vote taken on December 12, 2006

b. The Appeal is **DENIED**.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and John G. Parsons voting to deny the appeal)

Vote taken on February 6, 2007

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: JAN 03 2008

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17551 of Mustafa Guldu, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 405, a variance from the side yard requirements under § 404, and a variance from the prohibition on enlarging a non conforming structure under subsection 2001.3 that will increase an existing nonconformity and which will not comply with area requirements¹, to allow the construction of a two-story addition to an existing flat (two-family dwelling) in an R-2 District at premise 4323 River Road, N.W. (Square 1653, Lot 16).

HEARING DATES: December 19, 2006 and January 23, 2007

DECISION DATE: January 23, 2007

DECISION AND ORDER

This application was filed by Mehmet Ergene, an Architect, on behalf of Mustafa Guldu ("Applicant"), the owner of the property that is the subject of this application. The property, located at 4323 River Road, N.W., is improved with a nonconforming flat in an R-2 District. The Applicant self-certified his need for variance relief from the Board of Zoning Adjustment. He is seeking variances from the lot occupancy requirements under § 405, the side yard requirements under § 404, and the prohibition on enlarging a non conforming structure under § 2001.3, to construct a two-story addition to the existing flat.

For the reasons discussed below, the Board denied the application by a vote of 5-0-0.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 28, 2006, the District of Columbia Office of Zoning ("OZ") notified the Councilmember for Ward 3, Advisory Neighborhood Commission ("ANC") 3E, as well as the ANC member for Single Member District 3E03, the District of Columbia Department of Transportation ("DDOT") and the District of Columbia Office of Planning ("OP"), of the filing of the

¹ The application was originally advertised as a request to expand a structure devoted to a nonconforming use pursuant to 11 DCMR § 2002.5. For reasons that are explained in the conclusions of law, the Board determined that it was the structure that was nonconforming, not the use.

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application. Pursuant to 11 DCMR § 3113.13, the OZ published notice of the hearing on the application in the *District of Columbia Register* and on October 5, 2006 mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the December 19, 2006 hearing date. On December 15, 2006, the Applicant filed an affidavit of posting indicating that he placed a zoning poster on the subject property in plain view of the public on December 4, 2006. In fact, he did not post the notice on the property until December 8, 2006, after his agent, Mr. Ergene, was notified by the staff that the Office of Zoning had received information indicating that the property had not been posted. As a result of the late posting, the Board postponed the hearing until January 23, 2007.

Requests for Party Status. The Board granted party status to Elaine Chan, the daughter of Florence Chan, the owner of 4321 River Road, N.W. on lot 15. That property is the other half of the semi-detached building that is owned by the Applicant, and it shares the party wall to the east of the subject property. The Board also granted party status to Michael Soghomonian, who was representing his father, John Soghomonian, the owner of lot 14, which is the property that is immediately adjacent to the Applicant's property on the west side and the rear. ANC 3E was automatically a party to the proceeding.

Applicants' Case. The Applicant and his architect testified in support of his variance application. Although the Applicant's intention with respect to this building was not entirely made clear, it appears that he will be occupying one unit and renting out the other. Although the addition would contain a bedroom on each floor, the number of bedrooms would not increase since one of the existing bedrooms on each floor would be converted into a den. In addition, each unit would have a passageway leading to a new bathroom. At present, the only means of accessing the existing bathroom is through one of the bedrooms. The reconfiguration permitted by the addition would allow persons using each bedroom to directly access a bathroom. Also, the expansion and reconfiguration of the structure would allow the Applicant to increase the rent charged for the other unit so as to offset increases in his property tax.

Government Reports. On December 12, 2006, OP filed its report recommending that the application for variance relief be denied because it did not meet two of the three elements for granting variance relief.

ANC Report. In letters dated November 11 and December 15, 2006, ANC 3E informed the Board that at a properly noticed meeting on December 14, 2006, the Commissioners voted, 4-0, to support the application. Subsequently, in a letter dated January 12, 2007, the ANC Chairman stated that new information had come to the Commissioners' attention concerning the Applicant's failure to contact a neighbor and his failure to post

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attention concerning the Applicant's failure to contact a neighbor and his failure to post notice, and, if this information had been available at the time of the initial vote, it may have resulted in the ANC recommending that the application be denied. The January 12th letter does not reflect official action by the ANC since no vote was taken by the ANC at a duly noticed meeting.

Parties and Persons in Support. There were no parties or persons in support of the application.

Parties and Persons in Opposition. Elaine Chan, representing her mother, the owner of the other half of the duplex, testified as a party in opposition. She testified that there was frequent flooding in the basement of her mother's property as a result of water flowing off of the Applicant's property on to her mother's property at 4321 River Road, N.W., and that condition would be exacerbated by the proposed addition. According to Ms. Chan, the increased lot coverage would result in increasing the runoff and reducing the permeable surface area and vegetation available for the absorption of water from rain and snow. Ms. Chan was also concerned that there could potentially be three bedrooms in each unit, which could result in an increase in the number of residents in the subject property. She feared that additional residents would lead to more noise, increased demands on parking, and greater competition for open space for recreation, leisure and solid waste disposal containers. Ms. Chan felt that these factors would have an adverse impact on the rental value of her mother's property.

Michael Soghomonian, whose father owns the property to the rear and west of the subject property, was concerned that the addition would be too close to his father's property, be too large, and adversely affect light and air. He also opposed the proposed construction because of the possibility that the addition on the property could later be used as two three bedroom housing units.

Gustavo Vasquez, of 4907 44th Street, N.W., filed a statement in opposition to the application, claiming that the subject property would be a four unit apartment building, too large for its lot, and out of character with the neighborhood.

FINDINGS OF FACT

1. The subject property is located at 4323 River Road, N.W., Square 1653, Lot 16, in an R-2 zone district.

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3. A flat is a two-family dwelling, 11 DCMR 199.1 definition of "flat"), which is first permitted in an R-4 zone district, 11 DCMR § 330.5 (b).
4. The property is an irregularly shaped lot that is a trapezium, which is nearly triangular shaped.
5. The subject property is bounded on the east by lot 15, on which is located 4321 River Road, N.W. That lot is improved by a semi-detached flat dwelling that shares a common divisional wall with the subject property.
6. To the west of the subject property is a ten-foot wide green space that is an extension of lot 14. Lot 14 also abuts the rear of the subject property to the north and has a residence on it that fronts on Ellicott Street.
7. The subject property is improved with a flat with one unit on the first floor and another unit on the second floor. Each unit has two bedrooms with a bathroom located between the two bedrooms.
8. The bathrooms do not open on to a common area, but may only be accessed through one of the bedrooms.
9. The subject structure is also nonconforming in two respects. First, it is a flat, which is not among the matter-of-right uses permitted in the R-2 district pursuant to 11 DCMR § 300.3, and second, it occupies 41.9% of its lot, which exceeds the 40% maximum lot occupancy allowed for "all other structures" in an R-2 zone by 11 DCMR § 403.2.
10. The proposed addition would be attached to west side of the existing semi-detached dwelling. The addition would consist of a bedroom, a bathroom, and a walk-in closet being added to each unit. One of the existing bedrooms in each of the units would become a den.
11. The proposed addition would be nearly triangular in shape with its new building walls parallel to the property lines.
12. Applicant proposes to increase the already nonconforming lot occupancy to 55.9%
13. The side yard to the west of the addition will be 5 feet wide, rather than the 8 feet that is the minimum width required for a side yard in an R-2 district. (See 11 DCMR § 405.9)

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14. Without the addition, the Applicant could still provide common access to each bathroom by constructing a door to the bathroom from the living room/dining room area (See Exhibit 9)
15. The Applicant provided no evidence that the property is not currently economically viable other than an undocumented assertion that the property is smaller than others in the neighborhood and that property taxes were increasing. (Transcript, January 23, 2007, 338-339)
16. In the past, the property has been a viable rental property for the Applicant.
17. The Applicant testified that, if the addition is not approved, he could make less extensive renovations to the building. (Transcript, January 23, 2007, 389)
18. The proposed addition would eliminate green space on the west side of the property, come within eight feet of its rear neighbor's property line, and be 20 feet from that neighbor's home.

CONCLUSIONS OF LAW

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.* In this context, the Board must consider the effect of the variance relief on the "public good," including the surrounding properties, and the size and massing of a building which would result from the granting of such relief.

As noted, a flat is not permitted in an R-2 zone. If a flat were considered a nonconforming use, 11 DCMR 2100.5 disallows the expansion of the structure in which it is located, "except if the enlargement is to be devoted to a conforming use." Although the application was advertised as a variance from this prohibition, the Board found that because residential uses are permitted in an R-2 zone, the fact the structure had two

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it is located, "except if the enlargement is to be devoted to a conforming use." Although the application was advertised as a variance from this prohibition, the Board found that because residential uses are permitted in an R-2 zone, the fact the structure had two dwelling units, rather than the single unit permitted, did not make that use nonconforming.

Instead, the Board concluded that the application involved an expansion of a nonconforming structure. As such, the provisions of 11 DCMR § 2001.3 applied. That subsection allows additions to a nonconforming structure if the structure will comply with lot occupancy requirements, the addition will conform to use and structure requirements, and the addition does not increase an existing nonconformity or create a new one. As noted in the findings of facts, the proposed addition will increase the nonconforming lot occupancy and will not comply with the side yard requirements. Therefore, a variance from 11 DCMR § 2001.3 is also required.

Because all of the variances required in this case are area variances, the Applicant must make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance will not be detrimental to the public good or impair the intent and integrity of the zone plan and regulations.

Since the subject property is irregularly shaped, the Applicant has met the first prong of the three part test for an area variance by establishing that the property has an "extraordinary or exceptional situation or condition." However, the Applicant has failed to show how that unusual shape has resulted in peculiar or exceptional practical difficulties for him in complying with the Zoning Regulations. Without any supporting documentation, the Applicant claimed that he needed the variances to make the property economically viable. He noted that the property was smaller than other properties in the neighborhood and the taxes were constantly increasing. In the past, the property has been a viable rental property for the Applicant. There is no reason to believe it will not continue to be so. The Applicant has admitted that even without the addition, he could make less extensive renovations. Since the Applicant has failed to submit any evidence that the property is not economically viable, the Board does not consider this to be a basis for a finding that there are practical difficulties.

The Applicant also testified that he wants to construct the addition to enable house guests to use the bathrooms without going through his bedroom. However, that objective can be

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achieved without constructing an addition, by adding a door to the bathroom from the living room/dining room area. Accordingly, the strict application of the Zoning Regulations does not result in a peculiar or exceptional practical difficulty for the Applicant.

The Applicant also fails to meet the third prong of the variance test, which requires that the Applicant show that the requested variance will not result in substantial detriment to the public good and that it will not impair the intent and purpose of the zone plan as embodied in the zoning regulations. The addition would increase the already nonconforming lot occupancy from 41.9 % to 55.9 %, which would be a significantly higher lot occupancy than the surrounding properties. It will likely have a negative effect on the privacy of the neighbor to the rear and its increased lot occupancy will be out of character with the other properties in the neighborhood. Consequently, variance relief cannot be granted without substantial detriment to the public good. The Board also concludes that the Applicant's proposed addition will impair the integrity of the R-2 zone plan by substantially impinging on the green space to the west of the existing building and increasing the lot occupancy significantly beyond the 40% limit to 55.9%. Such construction would be contrary to the purpose of the R-2 district, which is to protect one-family, semi-detached dwellings from the invasion by denser types of residential development and to preserve a significant amount of green space around them by limiting the lot occupancy to 40%.

The ANC and OP Recommendations

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). The ANC stated that it did not oppose the application. Subsequently, in a letter that was not the result of action taken during an official meeting, the ANC Commissioners expressed reservations about the application. However, the Board cannot rely on assertions that were not made in accordance with the requirements of section 13(d) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d) (2001). Furthermore, because the ANC report did not express any issues or concerns, there is nothing for which the Board can give great weight to.

The Board agrees with OP's recommendation that variance relief should be denied because the Applicant failed to meet the second and third prongs of the variance test for any of the variances sought. Since the Board reached this conclusion based upon the more lenient practical difficulty standard than the more severe undue hardship standard deemed applicable by OP, the difference in views is of no consequence.

BZA APPLICATION NO. 17551**PAGE NO. 8**

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to his application for variance relief. It is therefore **ORDERED** that the application is **DENIED**.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Gregory N. Jeffries and John A. Mann II to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each voting Board member (other than former members Griffis and Mann) has approved the issuance of this Order denying this application.

FINAL DATE OF ORDER: **DEC 31 2007**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17580 of Macy Development, LLC, pursuant to 11 DCMR § 3103.2 for a variance from the requirements to provide residential recreation space under § 773 of the Zoning Regulations, to allow construction of an eight unit residential condominium building at the premises known as 284 15th Street, SE (Square 1073, Lot 803).

HEARING DATE: March 20, 2007

DECISION DATE: May 1, 2007

DECISION AND ORDER

The application was submitted on or about November 7, 2006 by Macy Development, LLC (the applicant) seeking a variance from the residential recreation requirement then applicable to its property. A public hearing was held by the Board of Zoning Adjustment ("Board") on March 20, 2007. Soon thereafter, on April 6, 2007, the Zoning Commission's repeal of the residential requirement became effective. The Zoning Regulations provide that a project may be constructed in accordance with the zoning regulations in place on the day its building permit is issued, 11 DCMR § 3202.4. Since those regulations no longer include the requirement for which relief was requested, the Board voted on May 1, 2007 to dismiss the application as moot.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified, pursuant to § 3113.2 (Exhibit 3).

The application The applicant seeks a variance from the requirement under § 773 that 20% of the gross floor area at the project be dedicated to residential recreation space.

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all entities owning property within 200 feet of the applicant's site, the Advisory Neighborhood Commission (ANC) 6B, and the Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 25).

ANC 6B The subject site is located within the area served by Advisory Neighborhood Commission 6B, which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on February 20, 2007, with a quorum present, the ANC voted to approve the variance from the residential recreation requirement.

BZA APPLICATION NO. 17580**PAGE NO. 2**

Requests for Party Status The Board received requests for party status from three neighbors: Michael Young (Exhibit 21), Jennifer Solomon (Exhibit 23), and Michael Washington (Exhibit 24) (the Neighbors). The Board determined the Neighbors were more uniquely affected than members of the general public and granted their requests. Hearing no objections, the Board also directed the Neighbors to present their case in opposition as a single party.

Other Persons in Support/Opposition No other persons appeared at the hearing in support or in opposition to the application. However, the Board received a letter in support of the variance from the Capitol Hill Restoration Society, which noted the pending proposal to repeal the residential recreation requirement (Exhibit 19).

OP Report OP's report indicated that the application meets the test for a variance, and also noted that the residential recreation requirement would soon be eliminated (Exhibit 26). Although the report was prepared by Douglas Wood, testimony in support of the application was presented by Joel Lawson.

FINDINGS OF FACT**The Property**

1. The site is located at 284 15th Street, SE, on the northeast corner of 15th and C Streets, SE. The lot is 34.33 feet wide along 15th Street and 90 feet long along C Street, with a lot area of 3,090 square feet.
2. A public alley is located to the east and separates the site from a fire station. A two and one-half story row home is to the north of the site.
3. The site is located in the C-2-A zone. This zone district is "designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside the central core". See, 11 DCMR § 720.2. It also permits entirely residential buildings and was designed as a low and medium density residential area. See, 11 DCMR § 720.3.

The Proposed Project

4. The applicant proposes to build an eight unit condominium building which will be a maximum of 50 feet in height. The proposal provides four parking spaces below ground with access via the public alley. No recreation space is proposed.
5. The site was formerly used as a gas station. In anticipation of the proposed development, the applicant razed the one story structure on the site, and expended significant financial resources to remediate the soil.

BZA APPLICATION NO. 17580**PAGE NO. 3**The Residential Recreation Requirement

6. Requirements for the provision of recreation space were added to the Zoning Regulations in the 1970s. The amount of such space required varied from zone to zone, ranging from five percent (5%) to twenty percent (20%) of the total gross floor area. However, in response to requests from the Zoning Commission, this Board, and the public, OP initiated a rulemaking to amend these requirements to be more in line with current standards and expectations. *See*, Z.C. Order No. 05-02.

7. The Zoning Commission considered various proposals. However, ultimately, the Commission took proposed action following a public hearing on November 6, 2006 to repeal the residential recreation requirements in their entirety, and took final action to repeal the requirements at its January 8, 2007 public meeting. *See*, 11 DCMR § 3027.1, and 11 DCMR § 3028.¹

8. The rulemaking repealing the residential recreation requirement became effective on April 6, 2007, when the Commission's Notice of Final Rulemaking and Order was published in the *D.C. Register*. *See*, 11 DCMR 3028.9.

CONCLUSIONS OF LAWThe Applicable Law

As outlined above, the residential recreation requirements were in effect at the time the application was filed and at the time the hearing was held. However, the requirements were not in effect at the time the Board held its decision meeting on May 1, 2007. Since this development may be constructed in accordance with the zoning regulations in place on the day its building permit is issued, 11 DCMR § 3202.4, and since those regulations no longer include the residential requirement from which a variance was sought, the applicant no longer needs the relief applied for.

The Variance Application is Moot

The Board's Rules of Procedure provide that the Board shall not consider moot questions. 11 DCMR § 3100.7. A case is moot when the legal issues presented are no longer "live" or when the parties lack a legally cognizable interest in the outcome. *Cropp v. Williams*, 841 A.2d 328 (D.C. 2004), citing *Murphy v. Hunt*, 455 U.S. 478 (1982). Clearly, the legal issues here are no longer "live" as the request for zoning relief is no longer necessary.

Therefore, for the reasons stated, the Board concludes that the application is moot and the motion to dismiss the application is hereby **GRANTED**.

¹ Procedures governing rulemakings are set forth in Chapter 30 of the Zoning Regulations. The Final Rulemaking in Z.C. Case No. 05-02 also details the history of the text amendment repealing the residential recreation requirements.

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VOTE: **3-0-2** (Curtis L. Etherly, Jr., John A. Mann, II, and Michael G. Turnbull (by absentee ballot) in favor of the motion to grant, Ruthanne G. Miller and Marc D. Loud, not voting, not having participated in the case)

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this Order:

FINAL DATE OF ORDER: **JAN 04 2008**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal No. 16839-A of Advisory Neighborhood Commission 4A, pursuant to 11DCMR § 3100 and 3101 from the decision of the Zoning Administrator, for the issuance of a certificate of occupancy (#18366, dated August 31, 2001) for a child/elderly development center serving 30 persons, ages 22-85 years old and 7 staff, in a C-2-A District at premises 5511-14th Street, N.W. (Square 2800, Lot 9)¹

HEARING DATES: March 26, 2002, September 14, 2004, November 2, 2004
DECISION DATES: June 4, 2002, July 2, 2002, July 6, 2004, June 7, 2005,
December 6, 2005, May 1, 2007

SUMMARY ORDER ON REMAND

This appeal was remanded to the Board for further proceedings consistent with the District of Columbia Court of Appeals decision in *Chagnon v. District of Columbia Board of Zoning Adjustment*, 844 A.2d 345 (D.C. 2004). After conducting proceedings on remand, the Board voted to grant the appeal at a Public Meeting held on May 1, 2007. The following history is pertinent to the Board's consideration.

The Appeal

In Appeal No. 16839, filed January 4, 2002, the ANC challenged the issuance of a certificate of occupancy (C of O) to Metro Day Treatment Center, Inc. (Metro Day), for a "child/elderly development center". The ANC was represented by ANC 4A07 Single-Member District Commissioner John Chagnon. Mr. Chagnon alleged that the Zoning Administrator erred because the proposed use at the site did not qualify as a "child/elderly development center" under the definition for this use classification set forth at 11 DCMR §199. He argued, among other things, that Metro Day did not operate as a child/elderly development center under the definition because Metro Day served adults rather than children or the elderly, and the term "child/elderly development center" was defined to include only elderly individuals or individuals 15 years or younger. However, the Board disagreed and denied the appeal. The Board reasoned that Metro Day qualified

¹ The address, as stated on Certificate of Occupancy No. 18366, is 5507 – 14th Street, N.W. (Square 2800, Lot 10).

BZA APPEAL NO. 16839-A**PAGE NO. 2**

as a “child/elderly development center” because, as compared to a “child/elderly development center”, it functioned as a “similar program and facility”.

The Court of Appeals Decision

The Court rejected the Board’s reasoning and held that the Zoning Administrator may not “interpret defined uses in the Zoning Regulations to encompass other uses that are functionally comparable. . . if they are outside the definition”, 844 A.2d at 348. Thus, the Court found that the Board erred in denying the ANC’s appeal, and held that a C of O for a “child/elderly development center” could not be issued to a facility that only provided day care treatment for adults.

Although the Court vacated the order, the Court also indicated that the Board could determine if Metro Day was eligible for a C of O under a different use classification. At the conclusion of its order, the Court stated:

Although Metro Day does not qualify as a “child/elderly development center,” it may yet be eligible for a certificate of occupancy under a different use classification. Thus, in vacating the order of the BZA, we remand for further proceedings not inconsistent with this opinion.

844 A.2d at 349.

Proceedings on Remand

The Board conducted proceedings to determine eligibility under a different use classification, and sought comments from the parties to this end (See, Exhibits 45 and 49). Not finding any other classification that would clearly encompass this use, the Board decided to hold its proceedings in abeyance while the Zoning Commission considered a proposed text amendment to create a new “adult day treatment facility” as a matter-of-right use. The Commission took final action to adopt the text amendment at a public meeting on March 13, 2006, and the final rulemaking was effective on December 29, 2006 when it was published in the *DC Register*.² If Metro Day meets the definition of an adult day treatment facility, it will be eligible to receive a new certificate of occupancy to operate under that use classification.

² The Text Amendment is set out in Z.C. Order No. 05-01.

BZA APPEAL NO. 16839-A**PAGE NO. 3**

In accordance with the Court's remand, the Board may determine in this case whether Metro Day meets the new classification; or alternatively, the Board may grant the appeal on the basis that the Zoning Administrator erred in granting Metro Day a certificate of occupancy for use as a child/elderly development center. After carefully weighing these two options, the Board concludes that the better course is to grant the appeal and thereby adhere to the normal administrative process. Granting the appeal will require the Zoning Administrator to revoke Metro Day's current certificate of occupancy. Should Metro Day apply for a new certificate of occupancy the Zoning Administrator will then determine in the first instance based on current documentation and circumstances, whether Metro Day falls within the new classification.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the appeal is granted.

Vote taken on May 1, 2007

VOTE: **5-0-0** (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II,
 Marc D. Loud and John G. Parsons (by absentee ballot) to grant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

FINAL DATE OF ORDER: **DEC 20 2007**

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17681 of Jose Cruz, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear porch addition to an existing single-family dwelling under section 223, not meeting the open court requirements (section 406), in the R-4 District at premises 4110 13th Street, N.W. (Square 2822, Lot 59).

HEARING DATE: November 13, 2007

DECISION DATE: November 20, 2007

RECONSIDERATION DECISION DATE: January 8, 2008*

*Note: On November 20, 2007, the Board dismissed the application by a vote of 3-0-2 (Ruthanne G. Miller, Michael G. Turnbull and Shane L. Dettman to Dismiss, no other Board members participating), determined that the relief requested was not needed. On January 8, 2008, the Board on its own motion reconsidered its November 20, 2007, decision and upon further deliberation, voted to grant the special exception as advertised under section 223.

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C did not participate in the application. The Office of Planning (OP) submitted a report (Exhibit 24) in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board

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further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 6 – Plans) be **GRANTED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Michael G. Turnbull and Shane L. Dettman to approve. The remaining mayoral appointees not present, not voting.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: January 10, 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

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APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17682-A of Bill and Nicola Renison, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing single-family dwelling under section 223, not meeting the rear yard (section 404) requirements in the R-1-B District at premises 3222 Stephenson Place, N.W. (Square S-2017, Lot 801).

HEARING DATE: November 20, 2007

DECISION DATE: November 20, 2007

MODIFICATION DECISION DATE: January 8, 2008

MODIFICATION ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

BACKGROUND

On December 4, 2007, the Applicant submitted a motion (letter) to the Board requesting a minor modification of the plans approved in BZA Order No. 17682, dated November 21, 2007. The request was made pursuant to subsection 3129.1 of the 11 DCMR Zoning Regulations. The modification plans slightly alters the fenestration of the originally approved addition. The Applicant proffered that the changes being made are in response to a neighbor's concerns. The modification involves the addition of two traditionally sized, colonial style windows on the second floor. The new windows create a change to the roofline. The Applicant served a copy of the motion for modification of plans on the parties in the original application. The Office of Zoning did not receive any responses from the parties to the Applicant's motion. The Board concludes that the modification sought is minor in nature and does not change the material facts that the Board relied upon in approving the application.

The Board further concludes that the requested modification can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board also concludes that granting the requested modification of plans will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

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conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 25 – Revised Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud and Shane L. Dettman to approve, Gregory N. Jeffries to approve by absentee ballot. The third mayoral appointee not present, not voting.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JAN 09 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS

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ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17685 of Komsam Inc., pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a new seventeen (17) unit apartment building under section 353, in the R-5-A District at premises 5000 block of Drake (Queens Stroll) Place, S.E. (Square 5321, Lot 35).

HEARING DATE: November 20, 2007

DECISION DATE(S): December 18, 2007, January 8, 2008

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E submitted a report, taking no position, in the application. The Office of Planning (OP) submitted a report in conditional support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 353. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

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conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 33 – Plans) be **GRANTED**.

VOTE: **3-0-2** (Ruthanne G. Miller, Shane L. Dettman and Marc D. Loud to Approve, the third Mayoral Appointee and Zoning Commission member not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JAN 09 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS

BZA APPLICATION NO. 17685

PAGE NO. 3

ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17689 of Taiwo Demuren, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a new four (4) – unit apartment building under section 353 in the R-5-A District at premises 5139 Astor Street, S.E. (Square 5309, Lot 13).

HEARING DATE: December 4, 2007

DECISION DATE: December 18, 2007

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E submitted a report expressing no concerns in relation to this application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 353. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17689**PAGE NO. 2**

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that (pursuant to Exhibit 27) this application be **GRANTED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, Michael G. Turnbull (absentee vote) to grant.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: DEC 21 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR

BZA APPLICATION NO. 17689**PAGE NO. 3**

PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17690 of Taiwo Demuren, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a new four (4) – unit apartment building under section 353 in the R-5-A District at premises 5131 Astor Street, S.E. (Square 5309, Lot 9).

HEARING DATE: December 4, 2007
DECISION DATE: December 18, 2007

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E submitted a report expressing no concerns in relation to this application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 353. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17690
PAGE NO. 2

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that (pursuant to Exhibit 28) this application be **GRANTED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, Michael G. Turnbull (absentee vote) to grant.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: **DEC 21 2007**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE,

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17695 of John C. Dowd and Mark D. Anderson, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, a variance from the rear yard requirements under section 404, a variance from the lot occupancy provisions under section 403, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a rear addition to an existing one-family row dwelling in the R-5-B District at premises 1515 Vermont Avenue, N.W. (Square 278, Lot 26).

HEARING DATE: January 8, 2008
DECISION DATE: January 8, 2008 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2F. The ANC submitted a letter in support of the application. The OP submitted a report in opposition to the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 402, 403, 404, and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

BZA APPLICATION NO. 17695

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application (pursuant to Exhibit 10 – Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull to approve, the third mayoral appointee not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: January 10, 2008

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE,

BZA APPLICATION NO. 17695

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MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. rsn

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17696 of Hines VAFII 2100 M Street LP, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the roof structure setback requirements under subsection 400.7, and the parking space requirements under subsection 2108.2, and a variance from the loading platform height requirements under subsection 2201.7, a variance from the van parking requirements under subsection 2115.8, a variance from the compact parking space requirements under subsection 2115.4, a variance from the 45 degree height setback from neighboring property requirement under subsection 1709.20 and a variance from the loading space height requirements under subsection 2201.6, to allow the expansion of an existing office building with street level retail (through transferable development rights) by adding three new floors in the C-3-C District, at premises 2100 M Street, N.W. (Square 72, Lot 75).

SUMMARY ORDER

HEARING DATE: December 18, 2007
DECISION DATE: December 18, 2007 (Bench Decision)

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A did not participate in the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions under sections 400.7, and 2108.2, and variances pursuant to § 3103.2 from the requirements of sections 2201.7, 2115.4, 2115.8, 2201.6, and 1709.20. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11

BZA APPLICATION NO. 17696

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DCMR §§ 3104.1, 400.7, and 2108.2, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 1709.20, 2201.7, 2115.4, 2115.8, and 2201.6, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 11 – Architectural Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, and Shane L. Dettman to Approve. The third mayoral appointee not voting, not having participated in the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: December 20, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

BZA APPLICATION NO. 17696

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FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17697 of A&S Associates LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow two (2) or more principal buildings on a subdivided and vested theoretical lot under section 2516, to construct the last thirty-four (34) one-family detached dwellings previously approved by expired BZA Order No. 15340, in the R-1-A District at premises 4818 Foxhall Crescents, N.W. (Square 1397, Lot 1008).

HEARING DATE: December 18, 2007

DECISION DATE: December 18, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 2516. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2516, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

BZA APPLICATION NO. 17697

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conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 9 – Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud and Shane L. Dettman to Approve, the third Mayoral Appointee not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: December 21, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS

BZA APPLICATION NO. 17697

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ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING**

Z.C. Case No. 07-35

**(Consolidated PUD and Related Map Amendment – Square 5869, Lots 61-66
and Square 5872, Lots 49-56, 131-135, 940, 958, 971, and 972)**

January 4, 2008

THIS CASE IS OF INTEREST TO ANCs 8A & 8C

On December 28, 2007, the Office of Zoning received an application from Sheridan Redevelopment LLC and the District of Columbia Housing Authority (the “applicant”) for consolidated approval of a PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 5869, Lots 61-66 and Square 5872, Lots 49-56, 131-135, 940, 958, 971, and 972 in Southeast Washington, D.C. (Ward 8) on a site roughly bounded by Howard Road., S.E., Sheridan Road., S.E., and Pomeroy Road., S.E. The property is currently zoned R-5-A.

The applicant proposes to rezone the lots in Square 5872 and portions of the lots in Square 5869 to R-5-B, and to rezone other portions lots in Square 5869 to C-2-A in order to create a 342-unit mixed income housing development with 229 units committed to affordable housing. The project will include both new and renovated housing, and it will provide first-time and move-up homeownership opportunities, as well as preservation of project-based Section 8 contracts. There will be a five-story, 104-unit apartment building with a gross floor square footage of 114,873 and a density of 2.80 FAR constructed on one parcel; and 182 townhouses, along with 56 units in four-unit walk-up buildings with a gross floor square footage of 432,578 and a density of .98 FAR will be constructed on another parcel.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST**

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001)	\$16.00
3	DCMR ELECTIONS & ETHICS (MARCH 2007)	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995).....	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002).....	\$26.00
6A	DCMR POLICE PERSONNEL (JUNE 2007)	\$8.00
7	DCMR EMPLOYMENT BENEFITS (JANUARY 1986).....	\$8.00
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